

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

REGION III
1650 Arch Street
Philadelphia, PA 19103-2029

REGION V
77 West Jackson Boulevard
Chicago, IL 60604

IN THE MATTER OF:)
)
The Chemours Company)
and)
E. I. du Pont de Nemours and Company)
1007 Market Street)
Wilmington, DE 19898)
)
Respondents.)
)
Washington Works Facility)
Route 892 South)
Washington, WV 26181)
)

FIRST AMENDMENT TO ORDER
ON CONSENT

Proceeding under Section 1431(a)(1)
of the Safe Drinking Water Act,
42 U.S.C. § 300i(a)(1)

Docket Nos. SDWA-03-2009-0127-DS
SDWA-05-2009-0001

FIRST AMENDMENT TO ORDER ON CONSENT

WHEREAS, on March 10, 2009, E. I. du Pont de Nemours and Company (“DuPont”) and the United States Environmental Protection Agency (“EPA”) entered into an Administrative Order on Consent (Docket Nos. SDWA-03-2009-0127-DS and SDWA-05-2009-0001) (the “Consent Order”) pursuant to Section 1431(a)(1) of the Safe Drinking Water Act, 42 U.S.C. § 300i(a)(1), under which DuPont offered and/or provided, *inter alia*, temporary and/or permanent alternate drinking water supplies to public and private water systems in the vicinity of a manufacturing facility known as the Washington Works (the “Facility”) located in Wood County, West Virginia where levels of perfluorooctanoic acid (“PFOA”) were detected in finished water systems at concentrations equal to or greater than 0.40 micrograms per liter (“µg/L”) or parts per billion (“ppb”); and

WHEREAS, on or about February 1, 2015, The Chemours Company (“Chemours”) was formed as a wholly-owned subsidiary of DuPont and took over ownership and operation of the Facility; and

[PAGE]

WHEREAS, DuPont currently leases a portion of the Facility from Chemours and continues to operate the following production units on that portion of the Facility under a State-issued Title V operating permit: Acetal Resin Production, Nylon Resins Production, Engineering Polymers Compounding Production - East, Specialty Compounding Production, Filaments Production and Development and Laboratory Services (Title V Permit R30-10700001 Parts 3, 5, 6, 8, 9, and 13); and

WHEREAS, on or about July 1, 2015, Chemours became an independent publicly-traded company, and, in accordance with various transaction documents relating to the corporate reorganization between DuPont and Chemours, has been implementing the requirements of the Consent Order since that time; and

WHEREAS, DuPont remains a Respondent to the Consent Order; and

WHEREAS, DuPont for more than ten years and Chemours since its formation in 2015 have worked cooperatively with EPA in providing water treatment to local communities in the vicinity of the Facility. As of June 30, 2016, DuPont and Chemours have installed and are maintaining seven granulated activated carbon treatment ("GAC Treatment") systems for six public water supply systems. In addition, DuPont and Chemours have offered connection to a public water system, installation of a GAC Treatment system, installation of another EPA-approved form of treatment, or bottled water (where connection to a public water system, installation of a GAC Treatment system, or installation of an alternative EPA-approved form of treatment was not feasible) to owners of residences using private water systems. As of June 30, 2016, DuPont and Chemours have connected 57 private water systems to a public water system, have installed and are operating GAC Treatment at approximately 61 private water systems, and are providing bottled water on a long-term basis to 5 private water systems; and

WHEREAS, EPA's findings in Section IV of the Consent Order reflect data and information available as of 2009; and

WHEREAS, based upon current science, changed circumstances, and new, site-specific information, and including EPA's issuance of a Lifetime Health Advisory value for PFOA on May 19, 2016,¹ EPA and DuPont wish to amend certain provisions of the Consent Order as set forth herein ("First Amendment"), and to including adding Chemours as a Respondent to the Consent Order; and

WHEREAS, DuPont for more than ten years and Chemours since its formation in 2015 have worked cooperatively with EPA in providing water treatment to local communities in the

1 United States Environmental Protection Agency's Office of Water, *Drinking Water Health Advisory for Perfluorooctanoic Acid (PFOA)* (including *Health Effects Support Document for Perfluorooctanoic Acid (PFOA)*) (EPA, 2016). Available at <https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos>.

~~vicinity of the Facility. As of June 30, 2016, DuPont and Chemours have installed and are maintaining seven granulated activated carbon treatment ("GAC Treatment") systems for six public water supply systems. In addition, DuPont and Chemours have offered connection to a public water system, installation of a GAC Treatment system, installation of another EPA-approved form of treatment, or bottled water (where connection to a public water system, installation of a GAC Treatment system, or installation of an alternative EPA-approved form of treatment was not feasible) to owners of residences using private water systems. As of June 30, 2016, DuPont and Chemours have connected 57 private water systems to a public water system, have installed and are operating GAC Treatment at approximately 61 private water systems, and are providing bottled water on a long-term basis to 5 private water systems; and~~

NOW THEREFORE, upon the consent and agreement of DuPont, Chemours, and EPA, it is hereby agreed as follows:

1. The term "Order" shall be replaced with the term "Consent Order" in Paragraphs 1 through 55 and Paragraphs 57 through 60 of the Consent Order except in the phrase "Order on Consent" in Paragraphs 1 and 21 of the Consent Order.
2. Paragraph 4 in the Consent Order shall be revised as follows: The Chemours Company ("Chemours") and E. I. Du Pont de Nemours and Company ("DuPont") (collectively, "Respondents") consent to EPA's jurisdiction to issue this Consent Order. Chemours and DuPont do not admit to the EPA Findings in this Consent Order and agree to ensure performance of the work set forth in this Order.
3. Paragraph 5 in the Consent Order shall be revised as follows: Chemours and DuPont waive any defenses they might have as to jurisdiction and venue and agree not to contest any of the findings of fact or conclusions of law herein in any action to enforce this Consent Order. Except as to any proceeding brought by EPA to enforce this Consent Order, in agreeing to this Consent Order, Chemours and DuPont make no admission of fact or law, fully reserve their rights to contest the findings herein, and reserve all rights and defenses available regarding liability or responsibility in any other legal proceeding related to the subject matter of this Consent Order. The findings of fact and conclusions of law contained herein are for purposes of this Consent Order only and shall not be used against Chemours or DuPont in any other proceeding by any third party. Chemours and DuPont further waive any rights to appeal this Consent Order that would be otherwise applicable under the SDWA, including under Section 1448(a) of the Safe Drinking Water Act, 42 U.S.C. § 300j-7(a).
4. Paragraph 8 in the Consent Order shall be revised as follows: For purposes of this Consent Order, PFOA or C-8 is perfluorooctanoic acid, CAS # 335-67-1, and its salts, including ammonium perfluorooctanoate, CAS # 3825-26-1 ("APFO"). These are man-made perfluorinated compounds that do not occur naturally in the environment.

Commented [MM1]: Note to EPA – the language in this paragraph remains a key issue. Revisions have been made to try to address the concerns expressed by EPA during our recent conference call.

Commented [CJ2R1]: EPA is requesting examples of orders that contain this language.

5. The following definition shall be added to Section III (Definitions and Background) of the Consent Order as Paragraph 14a: “EDD” format is Electronic Delimited Data format for submission of all analytical data.

6. The following definition shall be added to Section III (Definitions and Background) of the Consent Order as Paragraph 14b: “Alternate drinking water supply” shall mean: water from a source acceptable to EPA that meets the water quality requirements of 40 C.F.R. Part 141 and that contains PFOA at a concentration not exceeding 0.07 ppb in finished water where applicable; is in sufficient quantity for drinking and cooking; and is provided in a manner convenient to the users.

7. The following definition shall be added to Section III (Definitions and Background) of the Consent Order as Paragraph 14c: “Temporary alternate drinking water supply” shall mean: an alternate drinking water supply that is provided on a temporary or short-term basis. A temporary alternate drinking water supply includes bottled water and bulk tanks of water that have been approved by the state or local health department(s) (e.g., water buffalos).

8. The following definition shall be added to Section III (Definitions and Background) of the Consent Order as Paragraph 14d: “Permanent alternate drinking water supply” shall mean: an alternate drinking water supply that is provided on a permanent or long-term basis. A permanent alternate drinking water supply includes, but is not limited to, connection of a private water system to a public water system or installation of a granulated activated carbon water treatment (“GAC Treatment”) system at a public or private water system.

9. Paragraph 15 in the Consent Order shall be revised as follows: Chemours and DuPont are both corporations and therefore are “persons” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12).

10. Paragraph 16 in the Consent Order shall be revised as follows: Between 1948 and 2015, DuPont owned and operated a manufacturing facility known as the Washington Works (“Facility”), located in Washington, Wood County, West Virginia. On or about February 1, 2015, Chemours was formed as a wholly-owned subsidiary of DuPont and took over ownership and operation of the Facility. DuPont currently leases a portion of the Facility from Chemours and continues to operate the following production units on that portion of the Facility under a State-issued Title V operating permit: Acetal Resin Production, Nylon Resins Production, Engineering Polymers Compounding Production - East, Specialty Compounding Production, Filaments Production and Development and Laboratory Services (Title V Permit R30-10700001 Parts 3, 5, 6, 8, 9, and 13). On or about July 1, 2015, Chemours became an independent publicly-traded company and, in accordance with various transaction documents relating to the corporate reorganization between DuPont and Chemours, has been implementing the requirements of the Consent Order since that time. DuPont remains a Respondent to the Consent Order.

11. Paragraph 17 in the Consent Order shall be revised as follows: DuPont used C-8, in the form of APFO, in its manufacturing processes at the Facility between the early 1950s and 2013.

9-12. In Sections V (Order on Consent) and VI (General Provisions) of the Consent Order, all references to “DuPont” shall be replaced with the term “Respondents” unless otherwise indicated herein.

10-13. Paragraph 42 of Section V (Order on Consent) of the Consent Order shall be removed and replaced with the following: Pursuant to the authority given to the EPA Administrator by Section 1431(a)(1) of the SDWA, 42 U.S.C. § 300i(a)(1), and delegated to the Regional Administrators, Respondents are ORDERED and hereby consent to ensuring performance of the work as follows:

- a) Provision of Temporary Alternate Drinking Water to Private Water Systems with Existing Sampling Data. For those private water systems where existing validated data demonstrates levels of PFOA above 0.07 ppb² in their finished water, Respondents shall offer a temporary alternate drinking water supply as soon as practicable, but in any event no later than fourteen (14) days after the Effective Date of this Draft Amendment. Respondents may offer to resample such private water systems to confirm existing sampling results. If the resident using the private water system accepts the offer of resampling and validated data from such resampling demonstrate that levels of PFOA are at or below 0.07 ppb in the finished water, Respondents shall resample the private water system on a quarterly basis to demonstrate to the satisfaction of EPA that the source water contains PFOA at concentrations equal to or less than 0.07 ppb for four consecutive quarters. If the source water contains concentrations of PFOA greater than 0.07 ppb, Respondents shall continue to offer a temporary alternate drinking water supply until one or more of the following circumstances have been met: (i) Respondents fully implement the Model Water Treatment Plan, which has been approved by EPA and is attached hereto as Exhibit A; or (ii) the resident declines the offers for temporary or permanent alternate drinking water supplies or resampling; or (iii) the resident is non-responsive to the offers of temporary or permanent alternate drinking water supplies or resampling (as determined by EPA); or (iv) until Respondents demonstrate to the satisfaction of EPA that the source water contains concentrations equal to or less than 0.07 ppb of PFOA for four consecutive quarters; or (v) the conditions of Paragraph 59 have been met. Respondents shall be responsible for all costs of the provision of temporary or permanent alternate drinking water supplies.
- b) Provision of Temporary Alternate Drinking Water – Public Water Systems with Existing Sampling Data. For those public water systems where existing validated data demonstrates levels of PFOA above 0.07 ppb in their finished water, Respondents shall

² United States Environmental Protection Agency’s Office of Water, “Drinking Water Health Advisory for Perfluorooctanoic Acid (PFOA)” (2016). (including Health Effects Support Document). Available: https://www.epa.gov/sites/production/files/2016-05/documents/pfoa_health_advisory_final_508.pdf.

offer a temporary alternate drinking water supply as soon as practicable, but in any event no later than fourteen (14) days after the Effective Date ~~of this First Amendment~~. Respondents shall offer a temporary alternate drinking water supply until they can fully implement the Model Water Treatment Plan, which has been approved by EPA and is attached hereto as Exhibit A, or the public water system either declines the offer of a permanent alternate drinking water supply or is non-responsive to the offer of a permanent alternate drinking water supply (as determined by EPA). Respondents shall be responsible for all costs of the provision of temporary or permanent alternate drinking water supplies.

- c) Provision of Temporary Alternate Drinking Water – Variances. Respondents may provide bottled water or bulk tanks of water (e.g., water buffalos) as a temporary alternate drinking water supply without seeking prior approval from EPA. If Respondents intend to provide a temporary alternate drinking water supply other than bottled water or bulk tanks of water, Respondents shall submit a plan for a variance to EPA for its review and approval (“Variance”). If EPA approves the Variance in writing, Respondents may implement the approved Variance, so long as bottled water or water in bulk tanks is provided until such time as the Variance is fully operational and demonstrated to be effective in providing potable drinking water containing PFOA at levels equal to or below 0.07 ppb.
- d) Provision of Alternate Drinking Water – Declined or No Response to Offers for Sampling or Treatment. Within fourteen days (14) days after the Effective Date ~~of this First Amendment~~, Respondents shall provide a list to EPA of all public or private water systems that previously declined ~~or did not respond to~~ offers of sampling or temporary or permanent alternate drinking water supplies. Respondents shall also include in each quarterly progress report required to be submitted to EPA under Paragraph 43 an updated list of all public and private water systems that have declined ~~or not responded to~~ offers of sampling or temporary or permanent alternate drinking water supplies. Within thirty (30) days after the Effective Date ~~of this First Amendment~~ and annually thereafter, Respondents shall contact those public and private water systems on the most current version of the list submitted to EPA as described above to confirm each water system’s current response regarding sampling or provision of temporary or permanent alternate drinking water supplies. ~~If at any time an offer to sample is accepted, then Respondents shall follow the provisions set forth in Paragraph 42(g).~~ If at any time an offer to provide a temporary alternate drinking water supply is accepted, then Respondents shall provide a temporary alternate drinking water supply as soon as practicable, but in any event no later than fourteen (14) days after the offer is accepted, and follow the provisions of Paragraphs 42(a) and (b), as applicable. If at any time an offer to provide a permanent alternate drinking water supply is accepted, then Respondents shall implement the Model Water Treatment Plan, which has been approved by EPA and is attached hereto as Exhibit A, for such water system and the water system shall be removed from the list

Commented [CJ3]: Need to fill gap.

being maintained pursuant to this Paragraph 42(d). Respondents shall be responsible for all costs of the provision of a temporary or permanent alternate drinking water supply.

- e) New and Existing Private Water Systems Receiving Treatment. For private water systems at which Respondents have already installed or will install GAC Treatment, Respondents shall provide for operation and maintenance of each GAC Treatment system in good working order, including but not limited to, timely replacement of carbon filters, until Respondents demonstrate to the satisfaction of EPA that the source water in the system prior to GAC Treatment contains PFOA at concentrations equal to or less than 0.07 ppb for four consecutive quarters, or the conditions of Paragraph 59 have been met. Respondents may also elect to satisfy any ongoing obligation under this Paragraph 42(e) by connecting a particular location to a public water system that contains PFOA at concentrations equal to or less than 0.07 ppb in finished water. If Respondents connect a private water system to a public water system that contains PFOA at concentrations equal to or less than 0.07 ppb in finished water, Respondent shall have no further obligations ~~hereunder~~ under this Paragraph 42(e) with respect to such private water system.
- f) New and Existing Public Water Systems Receiving Treatment. For public water systems at which Respondents have already installed or will install GAC Treatment, Respondents shall provide for operation and maintenance of each GAC Treatment system in good working order, including but not limited to timely carbon bed changes, until Respondents demonstrate to the satisfaction of EPA that the source water in the system prior to GAC Treatment contains PFOA at concentrations equal to or less than 0.07 ppb for four consecutive quarters, or the conditions of Paragraph 59 have been met. If Respondents connect a public water system to another public water system that contains PFOA at concentrations equal to or less than 0.07 ppb in finished water, Respondent shall have no further obligations ~~hereunder~~ under this Paragraph 42(f) with respect to such public system.
- g) Sampling of Private and Public Water Systems. ~~Respondents shall offer to sample and, if the offer is accepted, sample the finished water at private and public water systems in geographic locations identified under Paragraph 42(h). For a selected H geographical areas sampled in the vicinity of the facility as defined by EPA and described in the scope of work attached hereto as Exhibit H, Respondents shall offer to sample and, if the offer is accepted, sample the finished and source waters at private and public water systems identified through the previous checks with the county departments of health in Athens, Meigs and Washington Counties in Ohio and in Wood County in West Virginia where sampling was previously offered by Respondents, but where sampling was not accomplished or was declined by a water system owner or operator. Respondents shall also offer to sample and, if the offer is accepted, sample the finished water at private and public water systems installed between 2009 and 2016 that were newly identified through rechecking with the county departments of health in Athens, Meigs and Washington Counties in Ohio and in Wood County in West Virginia that are in that same selected geographical area in the vicinity of the facility.~~ In addition, Respondents shall offer to

[PAGE]

resample and, if the offer is accepted, resample private and public water systems where existing or new validated data demonstrate that PFOA is present at concentrations above 0.05 ppb but not greater than 0.07 ppb. Respondents shall notify EPA of monitoring results within seven (7) days after the data are validated through Respondents' internal data quality control/quality assurance procedures. Respondents shall also notify owners or operators of private and public water systems of monitoring results within ten (10) days after the data are validated through Respondents' internal data quality control/quality assurance procedures. If an offer to sample or resample is accepted and the sampling results for PFOA are at or below 0.05 ppb, then no additional sampling is required under this First Amendment to Order on Consent. If an offer to sample or resample is accepted and sampling results show PFOA to be present at concentrations between 0.05 ppb and 0.07 ppb, Respondents shall continue to monitor the finished water for the presence of PFOA on a quarterly basis until Respondents demonstrate to the satisfaction of EPA that the finished water contains PFOA at concentrations equal to or less than 0.07 ppb for four consecutive quarters, or the conditions of Paragraph 59 have been met. If an offer to sample or resample is accepted and the sampling results show PFOA to be present at concentrations in a water system above 0.07 ppb, Respondents shall offer a temporary alternate drinking water supply as soon as practicable, but in any event no later than fourteen (14) days after the receipt of validated data, and implement the Model Water Treatment Plan, which has been approved by EPA and is attached hereto as Exhibit A, for such water system. If a water system owner or operator either (i) declines an offer to sample or resample, or (ii) does not respond to an offer to sample or resample within forty-five (45) days after the offer is made, whichever occurs first, Respondents shall notify EPA in writing within ten (10) days thereafter.

- h) Survey and Identification of Private and Public Water Systems. As described in the scope of work, which has been approved by EPA and is attached hereto as Exhibit B, ~~[For new areas defined by EPA (after consultation with West Virginia and Ohio) as described in the scope of work attached hereto as Exhibit B,~~ Respondents shall conduct a water system survey of private and public water systems for the presence of PFOA in finished waters ~~in accordance with the scope of work attached hereto as Exhibit B.~~ Respondents shall commence the initial water system survey of representative systems within seven (7) days after the Effective Date of this First Amendment, ~~and offer to sample in accordance with the provisions of Paragraph 42(g).~~ Where representative sampling results show PFOA to be present at concentrations above 0.05 ppb at a particular location, Respondents will expand the sampling of private and public water systems in direct proximity to that location and offer sampling to determine if PFOA is present in finished water at concentrations above 0.07 ppb. ~~In addition, Respondents shall follow the provisions set forth in Paragraph 42(g) after receipt of validated data.~~
- i) Newly Activated or Permitted Water Systems. Respondents shall, on a quarterly basis following the Effective Date ~~of this First Amendment~~, contact in writing all county departments of health within the geographic areas defined by EPA (after consultation

Commented [CJ4]: Need to see draft ASAP

with West Virginia and Ohio and as described in the scope of work attached hereto as Exhibit B) to request that such county departments of health identify any newly activated public or private water systems since the receipt of the prior written request from Respondents. Respondents shall, within seven (7) days after learning of any newly activated public or private water system based on the responses to the written requests to the county departments of health as described above that is located in the geographical areas defined by EPA, ~~make an initial contact to offer to sample the water system. If the offer is accepted, Respondents shall follow the provisions set forth in Paragraph 42(g) after receipt of validated data sample the finished water in accordance with the scope of work attached hereto as Exhibit B provisions of Paragraph 42(h).~~ Respondents shall continue to request that county health departments identify any newly activated public or private water systems in the geographical areas defined by EPA until Respondents demonstrate to the satisfaction of EPA that the USDWs in these geographical areas (or a subset of those areas) contain PFOA at concentrations equal to or less than 0.07 ppb for four consecutive quarters, or the conditions of Paragraph 59 have been met.

Commented [CJ5]: What does it mean to make initial contact to offer? Isn't initial contact an offer?

- j) Method. Respondents shall perform all monitoring for PFOA required under Section V (Order on Consent)~~this First Amendment~~ using Standard Method 537 as used in the Unregulated Contaminant Monitoring Rule list 3 (UCMR3), Test America SOP No. DV-LC-0012 (Analysis of Perfluorooctanoic Acid (PFOA) and other Perfluorinated Hydrocarbons (PFCHs) and Perfluorinated Hydrocarbon Sulfonates (PFSSs) in Water and Soil by LC/MS/MS), or another EPA-approved analytical method.

Commented [MM6]: Note to EPA -- this language is included pending further discussions among the lab experts

Commented [CJ7R6]: Pending further review.

- k) Implementation of Model Water Treatment Plan. Respondents shall implement the Model Water Treatment Plan, attached hereto as Exhibit A, for any water system whose owner or operator accepts Respondents' offer for a permanent alternate drinking water supply. As soon as practicable, but in any event no later than ~~thirty (30) days~~ after receipt of validated data, Respondents shall act to initiate design of treatment and seek necessary regulatory permits to facilitate installation of GAC Treatment or an alternative approved by EPA. If an owner or operator of a water system rejects Respondents' offer, either through express rejection or failure to respond within forty-five (45) days after the offer is made, whichever occurs first, Respondents shall inform EPA in writing of this rejection and provide documentation within thirty (30) days after such rejection.

Commented [CJ8]: EPA believes 30 days is sufficient to initiate design and seek permits

- l) Respondents' Operation and Maintenance Obligations. Respondents have or will execute operation and maintenance agreements ("O&M Agreements") with each water system owner or operator who has accepted the offer for GAC Treatment unless a water system owner or operator does not respond to a request to enter into an O&M Agreement with Respondents or refuses to enter into an O&M Agreement on reasonable terms with Respondents, in which case Respondents shall notify EPA in writing. Respondents will provide for operation and maintenance of the GAC Treatment or an alternative approved by EPA consistent with the specific terms of these O&M Agreements until Respondents demonstrate to the satisfaction of EPA that the concentration of PFOA detected in the

[PAGE]

water system's source water prior to treatment is equal to or less than 0.07 ppb for four consecutive quarters, or the conditions of Paragraph 59 have been met.

- m) Follow-up Monitoring Following GAC Treatment. After GAC Treatment is terminated, Respondents shall monitor the source water for PFOA annually at EPA-specified public and private water systems for a period of five (5) years.
- n) Public Access Website. If either the West Virginia Department of Health and Human Resources ("WVDHHR") or the Ohio Department of Health ("ODH") wishes to Within sixty (60) days of the Effective Date of this First Amendment, Respondents shall create and maintain a publicly accessible website that will provide interested residents and businesses with all available data and information on the presence and levels of PFOA in ground water in the geographic areas subject to this Consent Order. Respondents shall take reasonable steps to provide data and information to WVDHHR and/or ODH in a form to facilitate its use in connection with such website(s) designated by EPA.

Commented [CJ9]: The website remains a key issue for EPA.

~~11.14.~~ Paragraph 43 in the Consent Order shall be revised as follows: Progress Reports.
Respondents shall submit Progress Reports as follows:

- a) Beginning October 1, 2016, and quarterly thereafter, Respondents shall submit to EPA, WVDHHR, WVDEP, OEPA and ODH written reports summarizing all actions taken in response to Paragraph 42 herein ("Progress Reports"). This reporting requirement shall remain in effect until Respondents submit a written request to EPA to submit Progress Reports on an annual basis and EPA approves such a request. Respondents shall continue to submit Progress Reports until such time as EPA provides written notice that the reports are no longer necessary, or this Consent Order is terminated.
- b) All Progress Reports required by this Paragraph shall contain the following certification, which shall be signed by a responsible corporate official of any Respondent performing the work required under Paragraph 42 of this Consent Order and summarized in the Progress Report:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- c) For purposes of this Consent Order, a responsible corporate official shall be:

[PAGE]

(A) a president, secretary, treasurer, or vice-president in charge of a principal business function, or any other person who performs similar policy or decision-making functions for any Respondent performing the work required under Paragraph 42 of this Consent Order; or

(B) the manager of the Washington Works, West Virginia, Facility, so long as authority to sign documents has been delegated in writing to the manager in accordance with corporate procedures.

15. The text of Paragraph 44 in the Consent Order shall be replaced with the phrase [INTENTIONALLY OMITTED].

12.16. Paragraph 48 of the Consent Order shall be modified only for the following EPA and WVDEP addressees:

As to EPA:

Roger Reinhart,
Compliance and Enforcement Team Leader, Safe Drinking Water
Act
Ground Water and Enforcement Branch
U.S. EPA Region III
1650 Arch Street (3WP22)
Philadelphia, PA 19103-2029

Heather Shoven
Enforcement Program Manager
Ground Water and Drinking Water Branch
U.S. EPA Region V
77 West Jackson Boulevard (WG-15J)
Chicago, IL 60604

As to WVDEP:

Yogesh Patel
Groundwater Protection and Permitting Section
Division of Water and Waste Management
W. Va. Dept. of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

[PAGE]

~~13.17~~ Paragraph 49 in the Consent Order shall be revised as follows: This Consent Order and any amendments thereto shall apply to and be binding upon DuPont and Chemours, and their successors, and assigns. All references to Respondent or Respondents throughout this Consent Order and any amendments thereto shall include their successor and assigns, as applicable. Respondents shall provide a copy of this Consent Order and any amendments thereto to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Order and any amendments thereto, as well as to any contractor retained to perform work required under this Consent Order and any amendments thereto. Respondents shall condition any such contract upon performance of the work in conformity with the terms of this Consent Order and any amendments thereto. In any action to enforce this Consent Order or any amendment thereto, Respondents shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Order and any amendments thereto. Respondents shall ensure that contractors and agents of Respondents engaged in performing the work described in Paragraph 42 of the Consent Order on behalf of Respondents are aware of the existence and requirements of the Consent Order. Any change in the ownership or corporate status of either Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter either Respondents' responsibilities under this Consent Order and any amendments thereto. In the event of the insolvency of any Respondent or the failure, as determined by EPA in its unreviewable discretion, by any Respondent to implement any requirement of this Consent Order and any amendments thereto, the remaining Respondent ~~(or its successor(s))~~ shall complete all such requirements.

Commented [CJ10]: Standard DOJ CD language.

~~14.18~~ The following paragraph shall be added to Section VI (General Provisions) of the Consent Order as Paragraph 49a: On December 11, 2015, Dow Chemical Company ("Dow") and DuPont entered into an Agreement and Plan of Merger which would create DowDuPont pending regulatory and other approvals. Upon consummation of the merger, Dow and DuPont will become wholly-owned subsidiaries of DowDuPont, each subsidiary retaining their respective pre-merger obligations. As described in the Amended and Restated Bylaws of DowDuPont filed with the United States Securities and Exchange Commission ("SEC") on June 10, 2016, following the merger, DowDuPont intends to create three new subsidiaries. The subsidiaries will consist of a new Materials business, a new Agriculture (AgCo) business and a new Specialty Products (Specialties) business. DuPont shall provide written notice to EPA within thirty (30) days of formation of that subsidiary which will become DuPont's successor-in-interest under the Consent Order. In addition, DuPont shall also make as a condition of the transfer of its obligations and liability under this Consent Order and any amendments thereto an annual requirement for its successor in interest to submit to EPA DuPont shall provide to EPA, when filed with the SEC, a copy of the General Form for Registration of Securities ("SEC Form 10") required by the SEC as part of formation of the successor entity and the Report of Independent Registered Public Accounting Firm certifying the same. These submittals Form 10 shall contain financial information sufficient to assess the assets and liabilities of the successor entity. At any point, if the successor entity does not prepare or is not required to prepare a SEC Form 10-K, the entity shall instead submit to EPA within ninety (90) days after the close of its

fiscal year: (a) a complete copy of successor's financial statements, audited in conformance with U.S. Generally Accepted Accounting Principles (GAAP) for the last completed fiscal year; (b) a copy of the independent CPA report on examination of successor's audited financial statements; (c) evidence of a current rating of either Standard and Poor's ("S&P") Long-Term Issuer Credit Rating or Moody's long-term Corporate Family Rating, showing a rating of BBB+ or greater as issued by S&P, or Baa1 or greater as issued by Moody's, or equivalent rating by a Nationally Recognized Statistical Rating Organization (NRSRO); and (d) an originally signed certification from the successor's CFO, or an officer of S&P, Moody's or NRSRO, documenting the successor entity's credit rating as stipulated above. DuPont and its successors shall notify EPA within 30 days when DuPont's obligations and liabilities in this matter are transferred to another legal entity, providing the name of the entity, address and contact person, as well as a complete set of the financial information stipulated in this section. In addition, as available in each successive year post-formation, the successor entity shall provide to EPA a copy of its SEC Form 10-K ("Annual Report") which shall contain sufficient information to assess that entity's continued financial condition and the Report of Independent Registered Public Accounting Firm certifying the same, and which shall after such determination regarding the identity of the entity that shall assume DuPont's liability under this First Amendment and, within the same written communication, provide financial information about the company assuming DuPont's liability under this First Amendment demonstrating such successor's ability to meet the obligations required by this Consent Order.

15.19. The following paragraph shall be added to Section VI (General Provisions) of the Order as Paragraph 49b: **Financial Assurance.** In order to ensure completion of the work required under Section V (Order on Consent), Respondents shall secure financial assurance, initially in the amount of \$X Million ("Estimated Cost of the Work").

Commented [CJ11]: Remains a key issue for EPA in the absence of agreement on successor language and on language that will affirm financial capability of successors as DuPont indicates it is acting as guarantor.

- a) The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available under "Financial Assurance" at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to trust funds, surety bonds guaranteeing payment, and/or letters of credit.
 - i. A trust fund: (1) established to ensure that funds will be available as and when needed for performance of the work required under Section V (Order on Consent); (2) administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and (3) governed by an agreement that requires the trustee to make payments from the fund only when the Regional Administrators of EPA Region III and Region V advise the trustee in writing that: (A) payments are necessary to fulfill the affected Respondents' obligations under the Order; or (B) funds held in trust are in excess of the funds that are necessary to complete the performance of the work required under Section V (Order on Consent);

- ii. A surety bond, issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury, guaranteeing payment or performance in accordance with Paragraph 49b(f) (Access to Financial Assurance);
 - iii. An irrevocable letter of credit, issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency, guaranteeing payment in accordance with Paragraph 49b(f) (Access to Financial Assurance);
 - iv. A demonstration by one or more Respondents that each such Respondent meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Paragraph (Financial Assurance) for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or
 - v. A guarantee to fund or perform the work required under Section V (Order on Consent), executed by one of the following: (1) a direct or indirect parent company of a Respondent; or (2) a company that has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; provided, however, that any company providing such a guarantee must demonstrate to EPA’s satisfaction that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Paragraph (Financial Assurance) for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee.
- b) Standby Trust. If Respondents seek to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, Respondents shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in Paragraph 49b(a), and into which payments from the other financial assurance mechanism can be deposited if the financial assurance provider is directed to do so by EPA pursuant to Paragraph 49b(f) (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to EPA in accordance with Paragraph X(c). Until the standby trust fund is funded pursuant to Paragraph 49b(f) (Access to Financial Assurance), neither payments into the standby trust fund nor annual valuations are required.
- c) Within thirty (30) days after the effective date of this Order, Respondents shall submit to EPA proposed financial assurance mechanisms in draft form in accordance with Paragraph 49b(a) for EPA’s review. Within sixty (60) days after the Effective Date of the First Amendment, or thirty (30) days after EPA’s approval of the form and substance of Respondents’ financial assurance, whichever is later, Respondents shall secure all

executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the EPA recipients listed in Paragraph 48.

- d) If Respondents provide financial assurance by means of a demonstration or guarantee under Paragraph 49b(a)(iv) or 49b(a)(v), the affected Respondents shall also comply, and shall ensure that their guarantors comply, with the other relevant criteria and requirements of 40 C.F.R. § 264.143(f) and this Sub-paragraph, including: (a) the initial submission to EPA of required documents from the affected entity's chief financial officer and independent certified public accountant no later than ninety (90) days after the Effective Date of the First Amendment; (b) the annual resubmission of such documents within ninety (90) days after the close of each such entity's fiscal year; and (c) the notification to EPA no later than thirty (30) days, in accordance with Paragraph 49b(e), after any such entity determines that it no longer satisfies the financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1).
- e) Monitoring of Financial Assurance.
 - i. Within one year of the Effective Date of this First Amendment Respondents shall develop and submit to EPA for approval a revised cost estimate for implementing the remaining work required under Section V (Order on Consent). Respondents shall thereafter develop and maintain a single cost estimate annually for the remaining work required under Section V (Order on Consent) to be performed. In any calendar year, if Respondent becomes aware, or should become aware, that the estimated cost to complete the remaining work has increased by ten percent (10%) or more above the amount calculated in the prior calendar year, such increase shall be reported and documentation of financial assurance for the increase shall be provided in the next due Quarterly Progress Report. Whenever the current cost estimate increases to an amount greater than the face amount of the financial assurance instrument, within sixty (60) days, Respondents must either increase the face amount of the instrument to an amount at least equal to the current cost estimate and submit evidence of such increase to EPA, or obtain other financial assurance as specified in Paragraph 49b to cover the increase.
 - ii. If EPA determines that the financial assurance provided under Paragraph 49b is inadequate or otherwise no longer satisfies the requirements of Paragraph 49b, EPA will notify the affected Respondent of such determination. Respondents shall, within thirty (30) days after notifying EPA or receiving notice from EPA under this Sub-paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Paragraph 49b.
 - iii. Respondents shall follow the procedures of Paragraph 49b(g) in seeking approval of,

and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure and submit to EPA financial assurance in accordance with Paragraph 49b shall in no way excuse performance of any other requirements of this Order, including, without limitation, the obligation of Respondents to complete the work in accordance with Section V (Order on Consent).

f) Access to Financial Assurance.

- i. If EPA determines that Respondents (1) have ceased implementation of any portion of the work required under Section V (Order on Consent), (2) are seriously or repeatedly deficient or late in their performance of the work required under Section V (Order on Consent), or (3) are implementing the work required under Section V (Order on Consent) in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Performance Failure Notice") to both Respondents and the financial assurance provider regarding the affected Respondents' failure to perform. Any Performance Failure Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Respondents a period of ten (10) days within which to remedy the circumstances giving rise to EPA's issuance of such notice. If, after expiration of the ten-day (10) period specified in this Sub-paragraph, Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice, then, in accordance with any applicable financial assurance mechanism, EPA may at any time thereafter direct the financial assurance provider to immediately: (i) deposit any funds assured pursuant to this Sub-paragraph into the standby trust fund; or (ii) arrange for performance of the work required by Section V (Order on Consent).
- ii. If EPA is notified by the provider of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Paragraph (Financial Assurance) at least thirty (30) days prior to the cancellation date, EPA may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such mechanism into the standby trust fund for use consistent with this Sub-paragraph.

- |
- g) Modification of Amount, Form, or Terms of Financial Assurance. Respondents may submit, on any anniversary of the Effective Date of this First Amendment or at any other time agreed to by the parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to the EPA individual(s) referenced in Paragraph 49b(c), and must include an estimate of the cost of the remaining work required by Section V (Order on Consent), an explanation of the bases for the cost calculation, a description of the proposed changes, if any, to the form or terms of the financial assurance, and any newly proposed financial assurance documentation in accordance with the requirements of Paragraphs 49b(a) and 49b(b).

EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change. Respondents may reduce the amount of the financial assurance mechanism only in accordance with EPA's approval. Within thirty (30) days after receipt of EPA's approval of the requested modifications pursuant to this Sub-paragraph, Respondents shall submit to the EPA individual(s) referenced in Paragraph 49b(c) all executed and/or otherwise finalized documentation relating to the amended, reduced, or alternative financial assurance mechanism. Upon EPA's approval, the Estimated Cost of the Work shall be deemed to be the estimate of the cost of the remaining work, required by Section V (Order on Consent), in the approved proposal.

- h) Release, Cancellation, or Discontinuation of Financial Assurance. Respondents may release, cancel, or discontinue any financial assurance provided under Sub-paragraph only (a) after receipt of documentation issued by EPA certifying completion of the work required by Section V (Order on Consent); or (b) in accordance with EPA's written approval of such release, cancellation, or discontinuation.

20. The following paragraph shall be added to Section VI (General Provisions) of the Consent Order as Paragraph 49b: In the event of any violation of, or failure or refusal to comply with, this Consent Order, EPA may seek judicial enforcement of this Consent Order pursuant to Section 1431(b) of the SDWA, 42 U.S.C. § 300i(b).

~~16. Paragraph 50 in the Consent Order shall be revised as follows: Nothing in this Consent Order shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violations of this Consent Order or of the statutes and regulations upon which this Consent Order is based or for Respondents' violation of any applicable provision of law. Notwithstanding the foregoing, EPA covenants not to sue or take other action against Respondent for the matters addressed in this Consent Order except to the extent Respondents fail to satisfy their obligations under this Consent Order, provided, however, EPA reserves its rights to take action against Respondents pursuant to the SDWA if (i) EPA establishes an MCL or other regulatory limit for PFOA under the SDWA through its regulatory processes in the future or (ii) EPA modifies the Lifetime Health Advisory Level for PFOA identified in this Consent Order based on a determination that the Lifetime Health Advisory Level may not be protective of human health. Respondents reserve all rights and defenses to respond to such action.~~

21. Paragraph 51 in the Consent Order shall be revised as follows: This Consent Order shall not relieve Respondents of their obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

~~17.22. Paragraph 52 in the Consent Order shall be revised by adding to the end of that paragraph the following sentence. The steps required by this Consent Order address EPA's determination in Paragraph 39, above.~~

Commented [MM12]: Note for EPA – This is intended to be a placeholder pending further discussions.

Commented [CJ13R12]: EPA managers will not agree to a CNS.

Formatted: List Paragraph, Indent: Left: 0", Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 3 + Alignment: Left + Aligned at: 1.5" + Tab after: 2" + Indent at: 1.5", Tab stops: 0.5", List tab + 2", Left

Commented [MM14]: Note for EPA – This is intended to be a placeholder pending further discussions.

Commented [CJ15R14]: EPA reads this language as a CNS. Is this the intention of the companies?

~~18-23~~ Paragraph 53 in the Consent Order shall be revised as follows: The undersigned representatives of Respondents certify that they are fully authorized by Respondents to enter into the terms and conditions of this Consent Order and to execute and legally bind Respondents to it.

~~19-24~~ Paragraph 54 in the Consent Order shall be revised as follows: Pursuant to Section 1431(b) of the SDWA, 42 U.S.C. § 300i(b), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, as revised (78 Fed. Reg. 66643-48 (Nov. 6, 2013)), the violation of any term of this Consent Order, or failure or refusal to comply with this Consent Order, may subject Respondents to a civil penalty not to exceed \$21,500 for each day in which such violation occurs or failure to comply continues. Future revisions to 40 C.F.R. Part 19 will apply to violations of any term of this Consent Order, or failure or refusal to comply with this Consent Order by Respondents, and may subject Respondents to higher civil penalties.

~~20-25~~ Paragraph 55 in the Consent Order shall be revised as follows: When any Respondent knows or should have known, by the exercise of due diligence, of an event that might delay completion of any requirement of this Consent Order, such Respondent shall provide notice to EPA, in writing, within two (2) business days after any Respondent first knew, or in the exercise of due diligence, should have known, of such event. The notice shall describe in detail the basis for the delay, including whether it is a *force majeure* event, and describe the length of, precise cause(s) of, and measures taken or to be taken to prevent or minimize such delay. If EPA agrees that such event constitutes *force majeure*, EPA shall extend the time for performance of such requirement, in writing, to compensate for the delay caused by the *force majeure* event. Any Respondent's failure to notify in writing in accordance with this Paragraph shall render this Paragraph void and of no effect concerning such event. For purposes of this Consent Order, *force majeure* is defined as an event arising from causes beyond the control of DuPont and/or Chemours, and any entity controlled by DuPont and/or Chemours, which delays or prevents the performance of any obligation under this Consent Order. Unanticipated or increased costs or expenses associated with implementation of this Consent Order and changed financial circumstances shall not, in any event, be considered *force majeure* events. In addition, failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Order, or to obtain or approve contracts, shall not, in any event, constitute *force majeure* events.

~~24-26~~ Nothing in this First Amendment to Order on Consent is intended to limit EPA's right, which EPA reserves, to modify the ~~Lifetime Health Advisory value for PFOA of 0.07 ppb~~ value identified in Section V (Order on Consent) Paragraph 13 of this First Amendment if EPA determines, on the basis of relevant information, that ~~such value 0.07 ppb~~ 0.07 ppb may not be protective of human health. Respondents reserve all rights and defenses should EPA take action under this Paragraph.

~~22-27~~ The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this First Amendment ~~to Order on Consent~~ and to execute and legally bind DuPont and Chemours to it.

~~23-28~~ The effective date of this First Amendment ~~to Order on Consent~~ is the date on which the Region III and Region V Regional Administrators sign the First Amendment ~~to Order on Consent~~, or, the last date upon which all signatures are obtained if not signed by the Region III and Region V Regional Administrators on the same day (“Effective Date”).

SO ORDERED:

Shawn M. Garvin
Regional Administrator
U.S. Environmental Protection Agency,
Region III

Date: _____

Robert A. Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency,
Region V

Date: _____

AGREED TO:

The Chemours Company

Date: _____

E.I. du Pont de Nemours and Company, Incorporated

Date: _____